

LAW OFFICES

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

BEN C. FISHER
GROVER C. COOPER
MARTIN R. LEADER
RICHARD R. ZARAGOZA
CLIFFORD M. HARRINGTON
JOEL R. KASWELL
KATHRYN R. SCHMELTZER
DOUGLAS WOLOSHIN
BRIAN R. MOIR
DAVID D. OXENFORD
BARRY H. GOTTFRIED
ANN K. FORD
BRUCE D. JACOBS
ELIOT J. GREENWALD
CARROLL JOHN YUNG
JOHN JOSEPH MCVEIGH
BARRIE D. BERMAN
JOHN K. HANE III
BRUCE F. HOFFMEISTER
SCOTT R. FLICK
FRANCISCO R. MONTERO
GREGORY L. MASTERS*
MATTHEW P. ZINN
ROBERT C. FISHER
LAUREN ANN LYNCH
BRIAN J. CARTER
GLENN S. RICHARDS*
KELLY D. YAKSICH*
ANDREW W. SHROYER*

*NOT ADMITTED IN D.C.

ORIGINAL

BEN S. FISHER
(1890-1954)

CHARLES V. WAYLAND
(1910-1980)

MCI MAIL: FWCLDC

ORIGINAL
FILE

RECEIVED

JUL 27 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 27, 1992

(202) 775-5677

92-96/

VIA HAND DELIVERY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Request for Refund of Hearing Fee
Cope II Broadcasting Partners
Applicant for New FM Station on Channel 278A
At Marion, Virginia (FCC File No. BPH-910312MF)

Dear Ms. Searcy:

On behalf of Cope II Broadcasting Partners ("Cope II"), this is to request a refund of the \$6,760.00 hearing fee paid by Cope II in connection with its above-referenced application for authority to construct a new FM station on Channel 278A at Marion, Virginia. Cope II submitted its hearing fee on July 15, 1991, the deadline set forth in the Commission's Public Notice, Mimeo No. 13110, released May 15, 1991. A copy of Cope II's fee submission appears as Attachment A hereto.

Two parties -- Cope II and James Killinger Cornick -- applied for the Marion, Virginia channel. Both applicants timely paid their hearing fees. By Hearing Designation Order in MM Docket No. 92-96, DA 92-519 (released May 5, 1992), the Commission designated the Cope II and Cornick applications for hearing.

On May 26, 1992, the date established for the filing of Notices of Appearances in the hearing, Cope II and Cornick filed a settlement agreement that contemplated the dismissal of Cope II's application in exchange for the payment of consideration by Cornick, and the grant of Cornick's application. A copy of the

No. of Copies rec'd 0+2
List A B C D E

Ms. Donna R. Searcy, Secretary
July 27, 1992
Page 2

parties' joint request for approval of the settlement agreement, containing the executed settlement agreement and supporting documentation, is appended hereto as Attachment B.

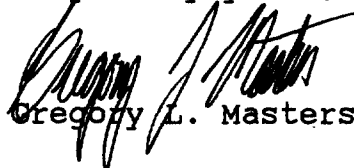
Finding the proposed settlement to be in the public interest, and further finding that Cornick's application was immediately grantable, the Presiding Judge approved the settlement, dismissed Cope II's application, granted Cornick's application, and terminated the proceeding. Memorandum Opinion and Order, FCC 92M-663 (released June 11, 1992) (reproduced as Attachment C hereto). The Judge's ruling approving the settlement has become final.

Section 1.1111(c)(4) of the Commission's Rules provides for refund of the hearing fee in cases where a settlement agreement, filed by the Notice of Appearance deadline, provides for the dismissal of all but one of the applicants and the surviving application is immediately grantable. 47 C.F.R. § 1.1111(c)(4). Because Cope II participated in a timely filed settlement agreement that contemplated universal settlement of the Marion, Virginia proceeding, Cope II is entitled to a refund of its hearing fee. See Letter from Marilyn J. McDermett to Michael E. Crane (North Plains Broadcasting Corp.) (June 3, 1992); Letter from Marilyn J. McDermett to Gary S. Smithwick (Fisher Communications of Clemson, Inc.) (June 17, 1992); Letter from Marilyn J. McDermett to Richard J. Hayes, Jr. (Jhonny V. Gomez) (June 9, 1992).

Accordingly, Cope II respectfully requests the Commission to refund its hearing fee in the amount of \$6,760.00. Please make the check payable to the maker of the original check and mail it as soon as possible to undersigned counsel at the address indicated above.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,


Gregory L. Masters

GLM/vm
Enclosure(s)
cc: Marilyn J. McDermett, Managing Director
for Operations (by hand)

2682-000

ATTACHMENT A

LAW OFFICES

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1125

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3534

July 15, 1991

BEN C. FISHER
GROVER C. COOPER
MARTIN R. LEADER
RICHARD R. ZARAGOZA
CLIFFORD M. HARRINGTON
JOEL R. KASWELL
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MATTHEW P. ZINN
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KAREN M. CORR*
JOAN A. SULLIVAN*
LAUREN ANN LYNCH*

BEN S. FISHER
(1890-1954)

CHARLES V. WAYLAND
(1910-1980)

OF COUNSEL
JOHN O. HEARNE

MCI MAIL: FWCLDC

*NOT ADMITTED IN D.C.

DELIVERY VIA MELLON BANK

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

RE: Application of Cope II Broadcasting Partners
for a New FM Station on Channel 278A, Marion, VA
File Number BPH-910312MF

Dear Ms. Searcy:

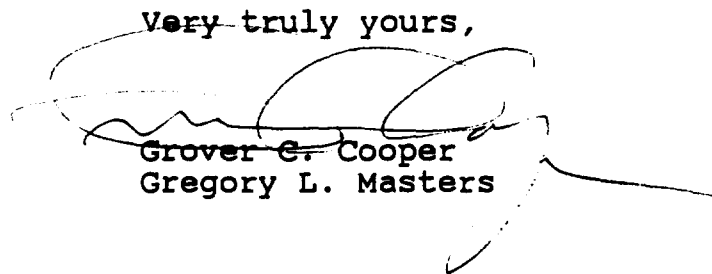
We are transmitting herewith, on behalf of our client, Cope II Broadcasting Partners, applicant for a new FM station at Marion, Virginia (FCC File No. BPH-910312MF), a check in the amount of \$6,760.00 in payment of the hearing fee required for this mutually exclusive application for the Marion facility. The application was accepted for filing on May 29, 1991. See Public Notice, Report NA-148. Also enclosed is FCC Form 155 accompanying the hearing fee check.

As of the date of this letter, a duplicate copy of this filing has been tendered with the FCC's Office of the Secretary for "back-up" filing purposes, along with certified proof of acceptance of the original plus the required copies by R&S Couriers, Inc. for delivery to the FCC in care of the Mellon Bank in Pittsburgh, Pennsylvania.

Ms. Donna R. Searcy
July 15, 1991
Page 2

If you have any questions regarding this matter, please
communicate with the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to be "Grover E. Cooper", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Grover E. Cooper
Gregory L. Masters

GCC:jb

Enclosures

2682-000

FEE PROCESSING FORM

FOR
FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

Cope II Broadcasting Partners

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

c/o Fisher Wayland: GCC

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

1255 23rd Street, N.W., Suite 800

CITY

Washington

STATE OR COUNTRY (If foreign address)

DC

ZIP CODE

20037

CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

910312MF

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)

(B)

(C)

(1)

FEE TYPE CODE

M W R

FEE MULTIPLE
(If required)

FEE DUE FOR FEE TYPE
CODE IN COLUMN (A)

\$6,760.00

FOR FCC USE ONLY

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)

FEE TYPE CODE

(B)

FEE MULTIPLE
(If required)

(C)

FEE DUE FOR FEE TYPE
CODE IN COLUMN (A)

FOR FCC USE ONLY

(2)

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\$	
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(3)

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\$	
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(4)

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\$	
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(5)

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\$	
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED
WITH THIS APPLICATION
OR FILING

\$ 6,760.00

FOR FCC USE ONLY

THOMAS E. COPENHAVER
SPECIAL ACCOUNT
BOX 149
MARION, VA 24354

3988

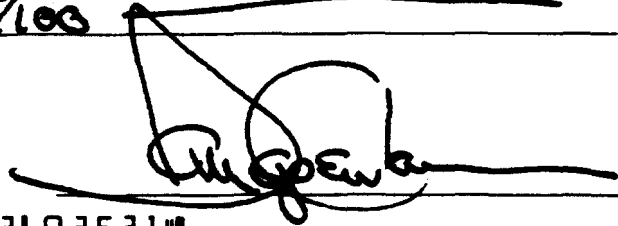
92-184
514

PAY
TO THE
ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION 7/15 1991 \$ 6760.00

SIXTY SEVEN THOUSAND SIXTY & 00/100 DOLLARS

 THE BANK OF MARION
MARION, VIRGINIA

FOR FCC. HEARING FEES.



⑈003988⑈ ⑆051401849⑆ 02402521⑈

ATTACHMENT B

RECEIVED

JUL 27 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of)	MM DOCKET NO. 92-96
JAMES KILLINGER)	
CORNICK)	File No. BPH-910311MA
)	
COPE II BROADCASTING)	
PARTNERS)	File No. BPH-910312MF
)	
For Construction Permit for a)	
New FM Station on Channel)	
278A in Marion, Virginia)	

To: Honorable Joseph Stirmer
Chief Administrative Law Judge

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT
AND MOTION FOR SUSPENSION OF PROCEDURAL DATES**

JAMES KILLINGER CORNICK ("Cornick") and COPE II BROADCASTING PARTNERS ("Cope II"), by their undersigned attorneys and pursuant to Section 73.3525 of the Commission's Rules, hereby jointly request approval of the attached settlement agreement which contemplates the dismissal of Cope II's application in exchange for the payment of consideration by Cornick. In support of this Joint Request, the following is shown.

1. This proceeding involves two mutually exclusive applications for authority to construct a new FM station on Channel 278A in Marion, Virginia.

2. Cornick and Cope II have entered into a settlement agreement whereby Cornick has agreed to pay Cope II the sum of \$4,000 for the dismissal of Cope II's application. The settlement agreement between Cornick and Cope II is appended hereto as Attachment 1.

3. The parties also jointly request the suspension of all procedural dates in this proceeding pending approval of the settlement agreement.^{1/}

4. As set forth in the attached Declarations (see Attachments 2 and 3), (i) the applicants have not filed their applications for the purpose of entering into a settlement agreement, (ii) neither Cope II, nor its principals has received any money or other consideration in excess of Cope II's legitimate and prudent expenses and (iii) no consideration has been or will be paid to Cope II either directly or indirectly, except as set forth in the settlement agreement.

5. There are no basic qualifications issues outstanding with respect to Cornick's application.

6. Grant of this Joint Request is in the public interest because it will conserve the time and resources of the Commission

1/ The Hearing Designation Order, DA 92-519, released May 5, 1992, established May 26, 1992, as the date for filing a notice of intention to appear on the date fixed for hearing, and other procedural dates for producing documents and filing integration statements. The parties request that the Presiding Judge suspend the deadline for producing documents and filing integration statements and all other procedural dates in this proceeding, pending action on this Joint Request for Approval of Settlement Agreement.

and will serve to expedite the provision of new broadcast service to Marion, Virginia.

FOR THE FOREGOING REASONS, the parties to this proceeding respectfully request that the Presiding Judge approve the settlement agreement attached hereto, dismiss the application of Cope II and grant the application of Cornick to construct a new FM station on Channel 278A in Marion, Virginia.

Respectfully submitted,

JAMES KILLINGER CORNICK

By: 
William H. Crispin
Michael E. Beller

VERNER, LIIPFERT, BERNHARD
McPHERSON AND HAND, CHARTERED
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 371-6000

COPE II BROADCASTING
PARTNERS

By: 
Grover C. Cooper
Gregory L. Masters

FISHER, WAYLAND, COOPER
AND LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 659-3494

May 26, 1992

Attachment 1 to Joint Request

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of this 22nd day of May, 1992, by and between JAMES KILLINGER CORNICK ("Cornick") and COPE II BROADCASTING PARTNERS ("Cope II")

W I T N E S S E T H

WHEREAS, Cornick and Cope II (collectively the "Applicants") are mutually exclusive applicants before the Federal Communications Commission ("FCC") for authority to construct a new commercial FM radio station on Channel 278A at Marion, Virginia (the "Marion FM Channel"), in MM Docket No. 92-96; and

WHEREAS, the rules and regulations of the FCC provide that only one of the applications can be granted; and

WHEREAS, it is the policy of the FCC to encourage applicants to reach a settlement to expedite new FM radio service to the public; and

WHEREAS, Cope II desires to dismiss its application in exchange for the payment of monetary consideration by Cornick; and

WHEREAS, the implementation of this Agreement will terminate administrative proceedings pending before the FCC to select between the Applicants, thereby conserving the resources of the FCC and of the parties, and expediting the provision of new FM broadcast service to Marion, Virginia; and

WHEREAS, the consummation of this Agreement is subject to the prior approval of the FCC.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

1. The parties hereto shall jointly file with the FCC a petition ("Joint Petition") requesting (a) approval of this Agreement; (b) dismissal of the application filed by Cope II with prejudice; (c) expeditious grant of Cornick's application. The Joint Petition shall include such supporting documentation as is required by Section 73.3525 of the Commission's Rules. The Joint Petition shall be filed no later than May 26, 1992.

2. In consideration for the dismissal of Cope II's application, Cornick shall pay Cope II the sum of Four Thousand Dollars (\$4,000) (the "Settlement Proceeds"), which shall be paid by check made payable to "Fisher, Wayland, Cooper and Leader as agent for Cope II Broadcasting Partners" on the Closing Date, as defined in Paragraph 3 hereof.

3. Cornick shall deliver the settlement payment to Cope II no later than five (5) calendar days after an order issued by the FCC granting Cornick's application and dismissing Cope II's application has become a Final Order (the "Closing Date"). Such order shall be deemed a Final Order when, by lapse of time or otherwise, it is no longer subject to administrative or judicial reconsideration, review, appeal or stay.

4. No later than ten (10) calendar days after the execution of this Agreement, Cornick shall deposit the Settlement proceeds in an interest-bearing account (the "Escrow Account").

The law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chtd. shall serve as the escrow agent (the "Escrow Agent"). No later than ten (10) days after the execution of this Agreement, the Escrow Agent shall provide evidence satisfactory to Cope II's counsel that the Escrow Account has been established.

5. Subject to the conditions set forth herein, on the Closing Date the Escrow Agent shall disburse the Settlement Proceeds to Cope II; all interest earned on the Settlement Proceeds shall be disbursed to Cornick. In the event that the order granting the Joint Petition has not become a Final Order by November 1, 1992, the Escrow Agent shall return the Settlement Proceeds (together with all interest earned thereon) to Cornick.

6. In the event of any dispute or question concerning the disposition of the Settlement Proceeds, the Escrow Agent may decline to make a disposition until such dispute or question is resolved to its satisfaction. By executing this Agreement, the Escrow Agent agrees to be bound by, and carry out the provisions of this Agreement.

7. Cornick and Cope II hereby agree jointly and severally to indemnify and hold harmless the Escrow Agent against any cause of action arising out of the performance of its duties hereunder.

8. The parties hereto agree that each will perform its obligations hereunder in good faith and with due diligence, and will cooperate with the other party in the implementation of this Agreement; specifically, the parties agree to provide each other

and the FCC with all information which may be required, take all other acts reasonably necessary to effectuate the objectives of this Agreement, and take no actions which would impede or delay FCC approval of this Agreement and the grant of Cornick's application. Furthermore, neither Cope II nor any of its partners shall impede or obstruct Cornick's construction or operation of an FM broadcast station on the Marion FM Channel.

9. Each party hereto represents that the execution, delivery and performance of this Agreement will not violate any provision of law or result in the breach of, or constitute a default under, the provisions of any agreement or other instrument to which such party is bound, or by which it or its property is bound or affected, except such provisions as shall have been waived in writing.

10. Each party shall bear its own expenses incurred in the preparation and implementation of this Agreement.

11. This Agreement embodies the entire agreement of the parties, and no amendment or modification may be made unless in writing and signed by each party to this Agreement.

12. All notices, claims and other communications hereunder shall be in writing and shall be personally delivered, delivered via next day delivery service, or sent by registered or certified mail:

(a) if to Cornick, to:

James K. Cornick
P.O. Box 85
Marion, Virginia 24354

with a copy (which shall not constitute notice)
to:

William H. Crispin, Esq.
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 Fifteenth Street, N.W.
Suite 700
Washington, D.C. 20005

(b) if to Cope II, to:

Thomas E. Copenhaver
146 Copenhaver Street
Marion, Virginia 24354

with a copy (which shall not constitute notice)
to:

Grover C. Cooper, Esq.
Fisher, Wayland, Cooper and Leader
1255 23rd Street, N.W.
Washington, D.C. 20037

or at such other address as any party may, from time to time,
furnish to the other party by a notice given in accordance with
the provisions of this Paragraph. All notices shall be deemed
given (i) on the date of personal delivery if delivered by hand;
or (ii) on the date of delivery set forth in the records of the
delivery service if sent by next day delivery service; or (iii)
on the delivery date indicated on the return receipt if sent by
registered or certified mail.

14. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective heirs, personal representatives, executors, administrators, successors and assigns.

15. This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia.

16. This agreement shall become null and void on November 1, 1992, if the FCC order granting Cornick's application and dismissing Cope II's application for the Marion FM Channel has not become a Final Order by that date.

17. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

JAMES K. CORNICK

By:


James K. Cornick

COPE II BROADCASTING PARTNERS

By:

Thomas E. Copenhaver, General Partner

14. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective heirs, personal representatives, executors, administrators, successors and assigns.

15. This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia.

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17. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

JAMES K. CORNICK

By: _____
James K. Cornick


COPE II BROADCASTING PARTNERS

By: _____
Thomas E. Copenhagen, General Partner

UNDERTAKING OF ESCROW AGENT

The law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chtrd. hereby agrees to act as Escrow Agent in accordance with the terms and conditions set forth in this Agreement.

By:


William H. Crispin
Michael E. Beller

Dated: May 22, 1992

Attachment 2 to Joint Request

DECLARATION ON BEHALF OF COPE II

DECLARATION

I, Thomas E. Copenhaver, General Partner of Cope II Broadcasting Partners ("Cope II"), hereby declare under penalty of perjury:

1. The application of Cope II for a new FM station in Marion, Virginia was not filed for purposes of reaching a settlement.
2. Other than the consideration set forth in the Settlement Agreement between Cope II and James Killinger Cornick, Cope II has been neither promised nor paid any additional consideration for the dismissal of its application.
3. The approval of the Settlement Agreement will be in the public interest, as it will allow the more rapid initiation of an FM service to the residents of Marion, Virginia. It will also allow termination of the pending litigation, thus eliminating the need to expend additional funds by both the parties and the FCC.
4. As is evident from the attached, Cope II has incurred legal expenses in connection with the preparation and prosecution of its application that alone are well in excess of the \$4,000.00 to be paid to Cope II for dismissal of its application under the Settlement Agreement.
5. The foregoing is true to the best of my knowledge and belief.



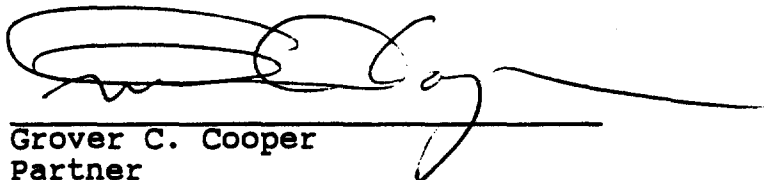
Thomas E. Copenhaver

Date: 5/22/92

DECLARATION

I, Grover C. Cooper, hereby declare under penalty of perjury that the following is true and correct:

1. I am a partner with the law firm of Fisher, Wayland, Cooper and Leader.
2. We represented Cope II Broadcasting Partners ("Cope II") in connection with the preparation and prosecution of its application for a new FM station on Channel 278A at Marion, Virginia.
3. Our services to Cope II included the following: consultation with the client concerning the preparation of the application; work on the application; consultation with engineer regarding Cornick application; research regarding public notice dates; consultation with client regarding hearing procedures; correspondence with client regarding payment of hearing fee; strategy discussions; preparation of Petition to Deny Cornick application; preparation of hearing fee transmittal; preparation of opposition to Cornick Petition for Leave to Amend; consultation with client regarding settlement strategy.
4. As of May 15, 1992, the total cost incurred by Cope II, relating to this matter, for our firm's legal time and associated expenses, has been \$14,926.50.
5. These charges have been made at the normal and customary rates for similar matters.



Grover C. Cooper
Partner
Fisher, Wayland, Cooper & Leader

Date: May 22, 1992

Attachment 3 to Joint Request

DECLARATION OF JAMES K. CORNICK

DECLARATION

I, James K. Cornick, hereby declare under penalty of perjury that the following is true and correct.

1. I am an individual applicant for a construction permit for a new FM station on Channel 278A in Marion, Virginia.

2. No consideration has been or will be paid to Cope II Broadcasting Partners ("Cope II"), which is the competing applicant for Channel 278A, either directly or indirectly, to obtain the dismissal of Cope II's application, except as set forth in the foregoing written settlement agreement between myself and Cope II.

3. My application was not filed for the purpose of reaching or carrying out a settlement agreement.

Executed on May 22, 1992.



James K. Cornick